

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

PERIODIC REPORTING
(PROPOSAL FOUR)

Docket No. RM2016-12

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO UPS MOTION SEEKING LEAVE TO RESPOND TO REPLY COMMENTS
(November 22, 2016)

On November 21, 2016, UPS moved for leave to file a response to the reply comments filed in this proceeding on November 14, 2016 by the Postal Service and Amazon Fulfillment Services. The procedural schedule established in the proceeding by Order Nos. 3482 (August 24, 2016), 3546 (October 4, 2016), and 3586 (October 26, 2016) made no allowance for responses to reply comments. In that respect, this procedural schedule exactly follows the normal practice in Commission rulemakings.¹

The instant UPS motion acknowledges, moreover, that the Commission's rules do not allow a response as a matter of right, but only at the discretion of the Commission.

Motion at 1. Providing responses to reply comments should only occur when extraordinary circumstances exist. No such circumstances exist in this docket. UPS has provided no adequate basis upon which the Commission should exercise its discretion to allow any additional submissions by UPS, and the Postal Service thereby opposes the UPS motion for leave.

¹ For example, in Docket No. RM2016-2, UPS filed its Proposals One and Two on October 8, 2015. Following the procedural schedule established by the Commission, the Postal Service and Amazon filed their comments on January 27, 2016. UPS then filed its reply comments on March 25, 2016, criticizing the Postal Service's and Amazon's comments. Neither the Postal Service nor (presumably) Amazon agreed with the arguments filed by UPS in its reply comments, but both parties accepted that the procedural schedule gave UPS the last word.

UPS relies on two grounds to support its motion for leave to respond, but utterly fails to explain why any such response is actually necessary. UPS Motion at 2. The first grounds offered are that the Postal Service and Amazon have misconstrued the simulation exercise discussed in the Brattle Report. *Id.* UPS had every opportunity to explain the nature of its simulation exercise in its Initial Comments. If the Postal Service and Amazon in fact misconstrued that exercise as UPS incorrectly claims, there is no reason why the Commission, in its own assessment of the conflicting arguments, would not be able to recognize this alleged flaw. Just because UPS fears that it may have failed to clearly explain its work in its Initial Comments is no reason why UPS should be allowed another bite at the apple to further explain what its exercise was or was not intended to represent.

For its second grounds, UPS even more egregiously asserts that the rebuttal analysis offered by Professor Bradley constitutes an admission that his “initial analysis was incorrect.” *Id.* This assertion is a gross distortion of the facts. UPS made a number of unsubstantiated claims in its comments, and Professor Bradley merely did additional analysis to show that those claims did not withstand empirical scrutiny. Professor Bradley did nothing to replace or to retreat from his original recommendations as reflected in Proposal Four. Rather, his new analysis was directed solely at demonstrating that the criticisms of his original analysis were not valid, because his research did not suffer from the flaws that UPS and the Public Representative alleged. Not only is the factual predicate of this portion of the UPS motion wrong, but UPS once again fails to explain why the Commission could not sort out the conflicting claims without further submissions from UPS. In essence, UPS seems to wish to establish a

principle that even empirical analysis offered solely as rebuttal to false claims regarding the original analysis automatically triggers the right to further response.

UPS further asserts that its response “would not be used as a vehicle to raise new arguments, but only as an opportunity to address arguments already raised in this docket to which UPS has not yet had any opportunity to respond.” Motion at 3. The mere fact that UPS is requesting three entire weeks to prepare its new submission, however, immediately calls that assertion into question. More to the point, the Postal Service and Amazon properly used their reply comments exclusively to respond to arguments raised by UPS and the Public Representative. They appropriately constrained the scope and nature of those replies, resulting in circumstances, contrary to the explicit premise of the UPS motion, in which there are no “arguments” in this docket upon which UPS has not already been heard.²

Simple logic dictates that, in any exchange of pleadings, one side or the other will have to get the last word if the exchange is ever going to come to an end. UPS had its chance to criticize the Postal Service’s initial filing, and did so. The Postal Service and Amazon responded. As the proponent of the Proposal, it is entirely appropriate for the Postal Service (and those supporting its proposal) to get the last word. UPS obviously wants to reverse these circumstances and get in the last word on its own behalf, but has provided no suitable basis to alter the orderly conduct of proceedings previously

² Alternatively, if any new material provided in further discussion of a topic constitutes new “arguments,” then UPS would surely provide new “arguments” in its proposed response, leaving the Postal Service and Amazon in the same position in which UPS now claims to be. By UPS’s logic, the Postal Service and Amazon would then be equally justified in asserting a need to respond to UPS’s response.

established by the Commission. Its motion for leave to file further comments should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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